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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,019	02/09/2004	Ernie DeVincent	81044287	9792
28866	7590	06/30/2005		
MACMILLAN, SOBANSKI & TODD, LLC ONE MARITIME PLAZA - FOURTH FLOOR 720 WATER STREET TOLEDO, OH 43604			EXAMINER LEWIS, TISHA D	
			ART UNIT 3681	PAPER NUMBER

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/775,019

**Applicant(s)**

DEVINCENT ET AL.

**Examiner**

TISHA D. LEWIS

**Art Unit**

3681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 8 and 10-13 is/are rejected.
- 7) ☒ Claim(s) 5, 6 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

The following is a first action on the merits of application serial no. 10/775,019 filed on February 9, 2004.

#### ***Information Disclosure Statement***

The information disclosure statement filed on February 9, 2004 has been acknowledged.

#### ***Claim Objections***

Claims 4, 5, 6 and 9 are objected to because of the following informalities:

- In claim 4, line 1, -the- should be inserted between "wherein" and "fixed".
- In claims 5, 6 and 9, the word "connect" should be changed to -connected-.
- In claim 9, line 9, "output" should be changed to -input-.
- In claim 9, line 10, -and- should be inserted after "input".

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "the input shaft" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4 and 7 are rejected under 35 U.S.C. 102(b) as being unpatentable by DE 19858553 A1. The DE reference discloses a transmission assembly for producing different ranges having an input shaft (8), an output shaft (9), a variable speed ratio path (32) driveably connected to the input shaft and having a first output (via 5), a fixed speed ratio path driveably connected to the input shaft and having a second output (extending from 7), a planetary gearset including a first input connected to the first output (6 and 10 are both connected to 5), a second input connected to the second output (6 and 10 are both connected to output extending from 7), a coupler (11, 12) continually driveably connected to the second output (Figures 3 and 5) and alternately connecting the second output to the first and second input. The DE reference discloses an input (via 2) of the variable speed ratio path arranged coaxially with the input shaft (8) and an input (via 3) of the fixed speed ratio path arranged coaxially with the input shaft. The DE reference discloses an input pinion (3) driveably connected to the input shaft and an input gear (7) in meshing engagement with the pinion, arranged coaxially with the first output (shaft extending from 5) and adapted through connection of coupler (11, 12) to the second output. The DE reference discloses a final drive gearset (14)

having an output pinion driveably connected to the output and an output gear in meshing engagement with the output pinion.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the DE reference in view of Fragnito ('389). The DE reference discloses a variator, but not in the form of truncated cones.

Fragnito disclose a continuously variable transmission receiving output from a planetary gearset wherein the transmission has truncated cones (16, 18) having mutually parallel axed, each cone having a conical surface with a large diameter section located adjacent a smaller diameter section of the other cone and a traction element (24) displaceable along an outer surface of each cone for variably changing an output of the transmission.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide the transmission of the DE reference with a cone variator in view of Fragnito to provide higher torque outputs of the transmission and eliminate hydraulic components used with belt or toroidal variators.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Figure 2 of the DE reference in view of Figure 3 of the DE reference. Figure 2 of the DE

reference discloses all the limitations of claim 1 and including the first input being continuously driveably connected to the first output and the second output connected to the second input by the coupler wherein a speed ratio is varied. Figure 2 does not disclose the first output being connected to the second input through a coupler. Figure 3 discloses the coupler connecting the first output to the second input and varying a speed ratio.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide the coupling arrangement of Figure 2 in view of Figure 3 to provide a variable change to the fixed speed ratio at the output of the transmission.

Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the DE reference as applied to claim 8 above, and further in view of Fragnito. The DE reference discloses providing a variable ratio path by moving traction elements, but the elements are not provided with cones.

Fragnito disclose a continuously variable transmission receiving output from a planetary gearset wherein the transmission has truncated cones (16, 18) having mutually parallel axed, each cone having a conical surface with a large diameter section located adjacent a smaller diameter section of the other cone and a traction element (24) displaceable along an outer surface of each cone for variably changing an output of the transmission.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide the transmission of the DE reference with a cone variator

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in view of Fragnito to provide higher torque outputs of the transmission and eliminate hydraulic components used with belt or toroidal variators.

***Allowable Subject Matter***

Claims 5, 6 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**FACSIMILE TRANSMISSION**

Submission of your response by facsimile transmission is encouraged. Group 3600's facsimile number is **(703) 872-9326 before final and 703-872-9327 after final**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

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Typed or printed name of person signing this certificate:

\_\_\_\_\_

\_\_\_\_\_

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only

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cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Miyata et al ('283), Yan et al ('686), Stockton ('369), Roberts et al ('127), Kim et al ('299), Wehking ('942) and Gumpoltsberger ('639) (US translation to DE reference used in rejection).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TISHA D. LEWIS whose telephone number is 571-272-7093. The examiner can normally be reached on M-Thur 6 AM TO 2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHARLES A. MARMOR can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).




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Tdl  
June 27, 2005

  
TISHA LEWIS  
PRIMARY EXAMINER  
AU 3681 6/27/05